

§ 1.6

any person making a request for records shall be considered to have exhausted administrative remedies with respect to the request. Accordingly, the person making the request may initiate suit as set forth in paragraph (k) of this section.

(k) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (h) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (g) and (h) of this section, respectively, together with any extension pursuant to paragraph (i)(1) of this section or by agreement of the requester, the person making the request may commence an action in a United States district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552 (a)(4). Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process shall be directed to the official specified in the appropriate appendix to this subpart as the official to receive such process.

(l) *Preservation of records.* Each component shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(m) *Processing of requests that are not properly addressed.* A request that is not properly addressed as specified in the appropriate appendix to this subpart shall be forwarded to the Departmental Disclosure Office, who will forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be considered not to have been received for purposes of paragraph (e) of this section until the request has been received by the appropriate component. A component receiv-

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ing an improperly addressed request forwarded by the FOIA/PA Section shall notify the requester of the date on which it received the request.

§ 1.6 Business information.

(a) *In general.* Business information provided to the Department of the Treasury by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to business submitters.* A component shall provide a business submitter with prompt written notice of a receipt of a request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) For business information submitted to the Department prior to July 14, 1987, the component shall provide a business submitter with notice of receipt of a request whenever:

(i) The information is less than ten years old;

(ii) The information is subject to prior express commitment of confidentiality given by the component to the business submitter, or

(iii) The component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(2) For business information submitted to the Department on or after July 14, 1987, the component shall provide a business submitter with notice of receipt of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(3) Notice of a request for business information falling within paragraph (c)(1) of this section shall be required for a period of not more than ten years after the date of submission unless the

business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, a component shall afford a business submitter ten working days within which to provide the component with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. When notice is given to a submitter under this section, the requester will be advised that such notice has been given to the submitter. The requester will be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the component may review the business submitter's objection to disclosure.

(e) *Notice of intent to disclose.* A component shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a component decides to disclose business information over the objection of a business submitter, the component shall forward to the business submitter a written notice which shall include:

(1) Statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which is ten working days after the notice of the final decision to release the requested information has been mailed to the submitter. A copy of the disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Wherever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the component shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The component determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public.

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was acquired in the course of a lawful investigation of a possible violation of criminal law.

§ 1.7 Fees for services.

(a) *In general.* (1) This fee schedule is applicable uniformly to all components of the Department of the Treasury and supersedes fee schedules published by any component of the Department. Specific levels of fees are prescribed for each of the following categories of requesters. (Requesters are required to identify what category they belong to in their initial request in accordance with § 1.5(c)).

(i) *Commercial use requesters.* These requesters are assessed charges which recover the full direct costs of searching, reviewing, and duplicating the records sought. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Department is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be